

REMARKS

Applicant acknowledges that the finality of the previous Office Action has been withdrawn and that Applicant's submission filed on May 2, 2007 has been entered, pursuant to a Request for Continued Examination.

EXAMINER INTERVIEW

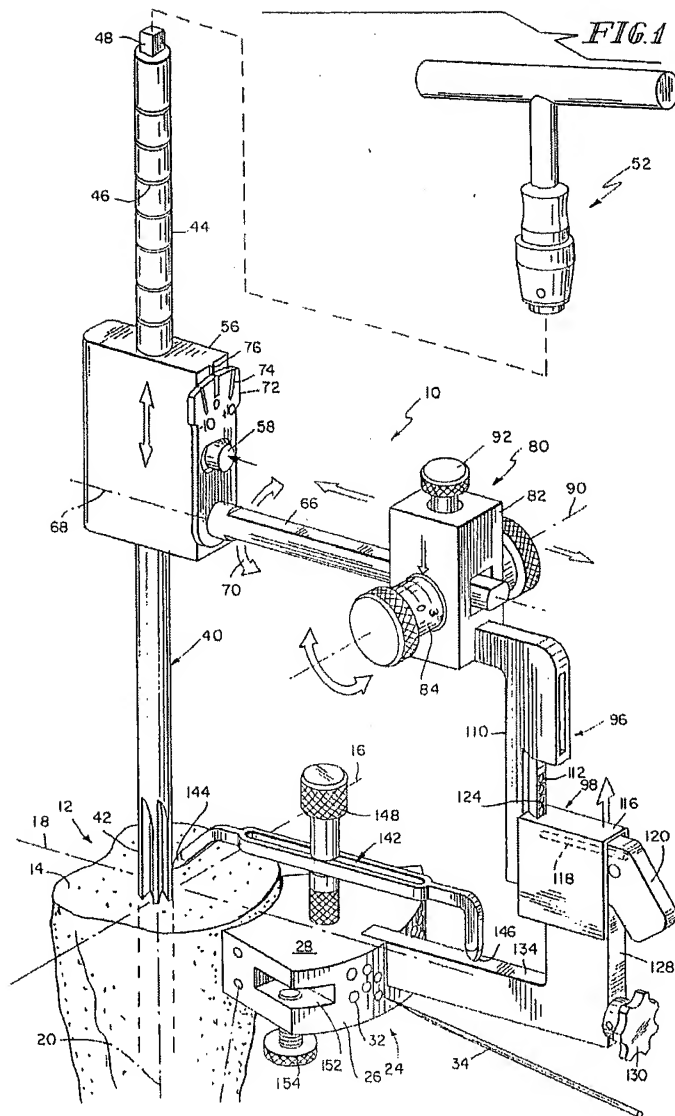
Applicant thanks the Examiner for the Examiner Interview conducted on October 30, 2007 during which Applicant's representative and the Examiner discussed the pending claims of record in view of the prior art. During the interview, Applicant's representative and the Examiner discussed novel features provided in the instant application over the art of record and, more specifically, U.S. Pat. No. 4,952,213 (Bowman). Specifically, one point of novelty stressed by the Applicant's representative is that the positioning member of the instant application is *disposed within bone* and the resecting member translates *proximate to* the positioning member *during resection*. The Examiner has taken the position that feature 42 of intermedullary rod 40 of Bowman defines a "resecting member" while the support bar 66 defines a "positioning member". Applicant's representative and the Examiner discussed claim amendments to clarify the distinction of the resecting member and positioning member of the instant application. Additionally, Applicant's representative and the Examiner discussed distinctions of the spacer in the instant application compared to the pin 144 of Bowman. Claim amendments to clarify the distinction of the spacer of the instant application were also discussed. As a result of the Examiner Interview, these points of novelty have been included in the amended claims. As discussed during the Examiner Interview, in the event that the now pending claims are not in condition for allowance, the Examiner

is invited to contact the Applicant's representative prior to issuance of a subsequent Office Action to help expedite prosecution of the application.

Claims 1-20 and 31-33, 35 and 36-38 are now pending in the application. Claims 1, 3, 11, 12, 31, 33 and 35 have been amended. Claims 21-30 and 34 are cancelled. Claims 36-38 has been added for substantive examination. The basis for the foregoing amendments may be found throughout the written description, drawings, and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-3, 8-9, 12-20, and 31-33 continue to stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,952,213 (Bowman). This rejection is respectfully traversed. Applicant notes that claims 1, 12 and 31 have been amended to capture points of novelty discussed during the Examiner Interview. Specifically, claim 1 has been amended to recite that that positioning member is partially disposed within the selected bone portion. Additionally, claims 1, 12 and 31 have all been amended to recite that the resecting member translates separate from and generally proximate to the positioning member. Applicant notes that Bowman does not disclose such a feature. FIG. 1 of Bowman is reproduced below for reference.



Applicant maintains that features 40 and 42 collectively define an intermedullary rod and not a resecting member (see also Col. 4, Lines 19-25). Assuming *arguendo* that feature 42 can define a resecting member, feature 42 cannot move separate from feature 40 because they are the same component and therefore integrally formed.

Applicant submits that feature 40 cannot alternatively be interpreted as a "positioning member" because each independent claim requires that the resecting

member translate separate from and proximate to the positioning member during resection. Again, features 40 and 42 of Bowman are integrally formed and cannot translate separately from each other. Applicant further submits that feature 66 cannot be interpreted as a "positioning member" because each independent claim now requires that the positioning member be at least in part disposed within the bone.

Applicant notes that independent claim 31 has also been amended to recite that the resecting tool is "movably coupled to said positioning rod and rotatable about a resecting axis". Applicant submits that this limitation further defines the relationship between the resecting tool and the positioning rod.

Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 6-7 and 10-11 continue to stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bowman in view of U.S. Pat. No. 5,409,489 (Sioufi). This rejection is respectfully traversed. Applicant submits that the combination of Sioufi fails to cure the deficiencies of Bowman in view of amended claim 1 discussed above.

Sioufi provides a surgical instrument 10 for cone-shaped sub-trochanteric rotational osteotomy. A guide 1 is fixed to a cervical screw 7 that has been previously inserted into a femoral head along the axis to the cone to be cut (FIG. 1). The drill bit 23 penetrates the lateral wall of the femur M as close as possible to the cervical screw 7. Cutting of the cone is achieved by lateral displacement of the drill bit 23 in a circular motion. The drill bit 23 of Sioufi cannot rotate around a positioning member as required by claim 1. Instead, the drill bit 23 of Sioufi is confined for passing through hole 21

formed in the guide 1. Therefore, Applicant respectfully requests withdrawal of the rejection.

Claims 4-5 and 34-35 stand rejected as being unpatentable over Bowman. This rejection is respectfully traversed. Claim 34 has been cancelled. Claims 4-5 and 35 ultimately depend from claims 1 and 31 as amended above. Applicant submits that in view of the amendments and related discussion of claims 1 and 31 discussed above, these claims are in condition for allowance. Therefore, reconsideration and withdrawal of these rejections are respectfully requested.

SPACER

Applicant notes that dependent claims 3 and 36 and independent claim 12 recite limitations directed toward the spacer and its relationship to the positioning member to further define over the art of record. Support for these limitations may be found in at least FIG. 1 of the disclosure as originally filed.

NEW CLAIMS 36-38

New claims 36-38 have been submitted for examination. New claims 36-38 further define the subject disclosure over the cited art. Specifically, claim 36 recites that the positioning member extends through a portion of the spacer. Claims 37 and 38 more specifically define the distinct nature of separate components: (a) the positioning member (rod); and (b) the resecting member (tool). Support for these new claims may be found in the disclosure as originally filed. No new matter has been entered.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: Nov. 13, 2007

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